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RUEHBS/USEU BRUSSELS  
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C O N F I D E N T I A L SECTION 01 OF 03 NOUAKCHOTT 000284

SIPDIS

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TAGS: [KDEM](#) [PGOV](#)

SUBJECT: CONSTITUTIONAL COUNCIL DODGES JUDICIAL  
RESPONSIBILITY IN THE NAME OF STABILITY

REF: A. NOUAKCHOTT 266

[1](#)B. NOUAKCHOTT 222

[1](#)1. Summary: In a speedy and little published decision, Mauritania's Constitutional Council declared April 15 -- the same day General Aziz resigned -- a "de facto" presidential vacancy which, in keeping with the constitution, opened the way for a transitional period led by President of the Senate Ba M'Bare. According to the Council, this decision brings the country back to a technical state of constitutional order. Council President Ely Salem explained to Charge d'Affaires the nuances of the decision and stressed the difference between a "de facto" and a "de jure" presidential vacancy. The former means there is a vacancy "in practice", which does not question President Abdallahi's rightful claim to the presidency, whereas the latter refers to a vacancy "in principle," meaning that the president is unable to exercise his functions for legitimate reasons. This decision, they believe, both guarantees Mauritania's stability and takes in consideration the reality of the situation -- that the vacancy exists because the military prevents the president from governing and General Aziz, the unconstitutional president, gave his resignation. End summary.

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ABDALLAHI IS STILL THE PRESIDENT BUT...  
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[1](#)2. Charge d'Affaires and PolOff met April 20 with President Salem to inquire about the presidential vacancy ruling. Charge expressed his surprise at the rapidity of the decision, particularly because he had met with Salem three days prior and Salem had stated the Constitutional Council had not yet been asked to rule on that question (Ref A). Salem, through interpreter and Constitutional Council member Taki Ould Sidi, explained the decision had been quick because the law requires the Council to pronounce itself immediately in matters pertaining to presidential vacancies. Comment: It is likely that the Council was consulted about the decision prior to General Aziz's resignation as President of the Senate Ba M'Bare told Charge he was confident that if the Constitutional Council was asked to declare a vacancy, it would do so without hesitation. The decision was reached so quickly that elected President Abdallahi and President of the National Assembly Messaoud Ould Boulkheir did not have a chance to transmit letters arguing that no presidential

vacancy existed. End comment.

¶3. Salem highlighted that the Council had declared a "de facto" presidential vacancy as opposed to a "de jure" one. He stressed the importance of the nuance as a "de facto" vacancy does not question President Abdallahi's rightful claim to the presidency. He explained the Council based its decision on the fact that the elected president has been forcibly prevented from exercising his mandate, and the General who deposed him "resigned". Therefore, there is a presidential vacancy "in practice" if not "in principle." Salem stressed that, for the Council, Mauritania's rightful president is Abdallahi and Aziz had no legitimate claim to that title. He added that, in theory, the Council could have ruled that there was no vacancy and President Abdallahi was still in power but added such a ruling would be "theoretical" instead of "practical" and could not be implemented.

¶4. When told by Charge that President Abdallahi and President of the National Assembly Ould Boulkheir had intended to raise the presidential vacancy matter with the Constitutional Council right after Aziz's resignation but had not had the time in view of the rapidity of the decision, Salem responded that they still had not raised the matter with the Council. Salem agreed that the opposition's main short-term goal had been to see Aziz resign, so perhaps they did not mind the Council's ruling (Comment: The FNDD and RFD indeed have not made a big deal of the Council's decision).

¶5. Salem explained the mechanism by which the Council was

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consulted. He said the Regime's Prime Minister Laghdaf brought to the Council's attention that General Aziz had stepped down from the High State Council (HSC) and that the HSC was dissolved as a political unit and would only rule over matters of security. Then, Laghdaf requested a return to constitutional order that would lead to a transition presided by the president of the senate and elections within a three month period. The Council ruled there was a vacancy and notified Ba M'Bare that he was interim president. Salem stressed that this was an extraordinary case, something that had never been seen in Mauritania because during the 2005 transition, the military junta had not resigned and no military candidate had run for office.

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WE DO NOT WANT TO FUEL THE FIRE  
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¶6. Salem explained that, when making a decision, the Constitutional Council not only relies on the constitution but also on Islamic law. Shari'a, he said, calls for submission to the person in power to avoid conflict. He also stated that the Council weights the political and social impact of decisions against the greater good of the nation and no decision that could have damaging effects is taken. He stressed the Constitutional Council cannot take a decision that cannot be executed, because such decision would bring about problems rather than solutions. The reality, he said, is that the rightful president is forcibly prevented from exercising his functions by the military and the president does not have the means to tip the balance of power. Therefore, the Council decided that it was their responsibility to establish the vacancy so that a return to constitutional order could take place. "As soon as the military told us they wanted to return to the constitution" we could not let the opportunity pass, he intimated.

¶8. Salem reassured Charge that in spite of the short deadline and the extensiveness of the decision, the Constitutional Council had not been provided a draft and had gone through the appropriate legal procedures to pronounce the vacancy and draft the decision.

¶9. When Charge asked about the possibility of General Aziz's candidacy being challenged on the grounds of Mauritania's

signature of the African Union charter, Salem said he could not comment on Aziz's eligibility because the Council had not yet gone through the appropriate reviews and procedures. He explained the deadline for candidacies is April 22. Once the Council publishes the final candidate list, candidates have 48 hours to question each other's eligibility. Salem did divulge that Aziz' file included his military resignation but noted that rather than resigning his commission entirely, Aziz had been put in reserve status (a new status created by the Parliament in January -- presumably for this purpose). Salem noted that the constitution only prohibits active duty military from running from office. Aziz's reserve status therefore is not a constitutional impediment.

¶10. In response to Charge's question on whether this decision ended President Abdallahi's mandate, the Council stressed that they had only pronounced themselves on the "de facto" vacancy and not on the "de jure" one. He reminded Charge that nobody had ever raised that question. He stressed that former President Ould Taya and President Abdallahi were in the same situation because they had both been deposed by a coup and nobody had yet asked the Council to rule on their situation.

¶11. The Council president stressed that currently Mauritania has returned to constitutional rule and that it is in a transition period. PolOff pressed the issue of what would happen if President Abdallahi came back to claim his rightful place on the grounds that he had been prevented from occupying his position by external forces rather than intrinsic reasons. He again stressed that in the best interest of Mauritania, the Council could not take a decision

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that could not be enforced. He then reminded Charge that the Mauritanian crisis is a political problem rather than a legal one and that no legal solution could fix the problem.

¶12. Comment: Mauritania has "returned to constitutional order," as Ba M'Bare outlined in his plan (Ref A), but the essential components of the solution -- Abdallahi's resignation, the formation of a government of national unity and a new election date -- never materialized. Although the exercise might be futile and risky, it would be interesting if President Abdallahi were, before the election, to ask the Constitutional Council to rule on his de facto vacancy as well as ask one of the candidates to challenge General Aziz's candidacy. From a Western perspective, Mauritania's Constitutional Council willingness to not rock the boat with "unenforceable rulings" is disappointing -- particularly from an institution charged with constitutional determinations.

HANKINS